

heard as to constitute a deprivation of due process.

(2) *Conviction in a foreign country.* For purposes of a hearing for interim suspension and on the formal charges filed as a result of a finding of guilt, a certified copy of the court record, docket entry, or judgment of conviction in a court of a foreign country shall establish a *prima facie* case by clear and convincing evidence that the practitioner was convicted of a serious crime and that the conviction was not lacking in notice or opportunity to be heard as to constitute a deprivation of due process. However, nothing in this paragraph shall preclude the practitioner from demonstrating by clear and convincing evidence in any hearing on a request for interim suspension there is a genuine issue of material fact to be considered when determining if the elements of a serious crime were committed in violating the criminal law of the foreign country and whether a disciplinary sanction should be entered.

(d) *Crime determined not to be serious crime.* If the USPTO Director determines that the crime is not a serious crime, the complaint shall be referred to the OED Director for investigation under § 11.22 and processing as is appropriate.

(e) *Reinstatement—*(1) *Upon reversal or setting aside a finding of guilt or a conviction.* If a practitioner suspended solely under the provisions of paragraph (b) of this section demonstrates that the underlying finding of guilt or conviction of serious crimes has been reversed or vacated, the order for interim suspension shall be vacated and the practitioner shall be placed on active status unless the finding of guilt was reversed or the conviction was set aside with respect to less than all serious crimes for which the practitioner was found guilty or convicted. The vacating of the interim suspension will not terminate any other disciplinary proceeding then pending against the practitioner, the disposition of which shall be determined by the hearing officer before whom the matter is pending, on the basis of all available evidence other than the finding of guilt or conviction.

(2) *Following conviction of a serious crime.* Any practitioner convicted of a

serious crime and disciplined in whole or in part in regard to that conviction, may petition for reinstatement under conditions set forth in § 11.60 no sooner than five years after being discharged following completion of service of his or her sentence, or after completion of service under probation or parole, whichever is later.

(f) *Notice to clients and others of interim suspension.* An interim suspension under this section shall constitute a suspension of the practitioner for the purpose of § 11.58.

#### § 11.26 Settlement.

Before or after a complaint under § 11.34 is filed, a settlement conference may occur between the OED Director and the practitioner. Any offers of compromise and any statements made during the course of settlement discussions shall not be admissible in subsequent proceedings. The OED Director may recommend to the USPTO Director any settlement terms deemed appropriate, including steps taken to correct or mitigate the matter forming the basis of the action, or to prevent recurrence of the same or similar conduct. A settlement agreement shall be effective only upon entry of a final decision by the USPTO Director.

#### § 11.27 Exclusion on consent.

(a) *Required affidavit.* The OED Director may confer with a practitioner concerning possible violations by the practitioner of the Rules of Professional Conduct whether or not a disciplinary proceeding has been instituted. A practitioner who is the subject of an investigation or a pending disciplinary proceeding based on allegations of grounds for discipline, and who desires to resign, may only do so by consenting to exclusion and delivering to the OED Director an affidavit declaring the consent of the practitioner to exclusion and stating:

(1) That the practitioner's consent is freely and voluntarily rendered, that the practitioner is not being subjected to coercion or duress, and that the practitioner is fully aware of the implications of consenting to exclusion;

(2) That the practitioner is aware that there is currently pending an investigation into, or a proceeding involving allegations of misconduct, the nature of which shall be specifically set forth in the affidavit to the satisfaction of the OED Director;

(3) That the practitioner acknowledges that, if and when he or she applies for reinstatement under § 11.60, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that:

(i) The facts upon which the investigation or complaint is based are true, and

(ii) The practitioner could not have successfully defended himself or herself against the allegations in the investigation or charges in the complaint.

(b) *Action by the USPTO Director.* Upon receipt of the required affidavit, the OED Director shall file the affidavit and any related papers with the USPTO Director for review and approval. Upon such approval, the USPTO Director will enter an order excluding the practitioner on consent and providing other appropriate actions. Upon entry of the order, the excluded practitioner shall comply with the requirements set forth in § 11.58.

(c) When an affidavit under paragraph (a) of this section is received after a complaint under § 11.34 has been filed, the OED Director shall notify the hearing officer. The hearing officer shall enter an order transferring the disciplinary proceeding to the USPTO Director, who may enter an order excluding the practitioner on consent.

(d) *Reinstatement.* Any practitioner excluded on consent under this section may not petition for reinstatement for five years. A practitioner excluded on consent who intends to reapply for admission to practice before the Office must comply with the provisions of § 11.58, and apply for reinstatement in accordance with § 11.60. Failure to comply with the provisions of § 11.58 constitutes grounds for denying an application for reinstatement.

**§ 11.28 Incapacitated practitioners in a disciplinary proceeding.**

(a) *Holding in abeyance a disciplinary proceeding because of incapacitation due*

*to a current disability or addiction—(1) Practitioner's motion.* In the course of a disciplinary proceeding under § 11.32, but before the date set by the hearing officer for a hearing, the practitioner may file a motion requesting the hearing officer to enter an order holding such proceeding in abeyance based on the contention that the practitioner is suffering from a disability or addiction that makes it impossible for the practitioner to adequately defend the charges in the disciplinary proceeding.

(i) *Content of practitioner's motion.* The practitioner's motion shall, in addition to any other requirement of § 11.43, include or have attached thereto:

(A) A brief statement of all material facts;

(B) Affidavits, medical reports, official records, or other documents and the opinion of at least one medical expert setting forth and establishing any of the material facts on which the practitioner is relying;

(C) A statement that the practitioner acknowledges the alleged incapacity by reason of disability or addiction;

(D) Written consent that the practitioner be transferred to disability inactive status if the motion is granted; and

(E) A written agreement by the practitioner to not practice before the Office in patent, trademark or other non-patent cases while on disability inactive status.

(ii) *Response.* The OED Director's response to any motion hereunder shall be served and filed within thirty days after service of the practitioner's motion unless such time is shortened or enlarged by the hearing officer for good cause shown, and shall set forth the following:

(A) All objections, if any, to the actions requested in the motion;

(B) An admission, denial or allegation of lack of knowledge with respect to each of the material facts in the practitioner's motion and accompanying documents; and

(C) Affidavits, medical reports, official records, or other documents setting forth facts on which the OED Director intends to rely for purposes of disputing or denying any material fact set forth in the practitioner's papers.